

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: D. Defeo-Jones et al

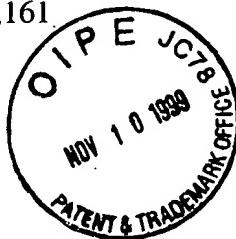
U.S. Serial No.: 08/468,161

Filed: 6/6/95

For: Novel Peptides

Group No.: 1654

Examiner: C. Delacroix
Muirhei



Assistant Commissioner for Patents
Washington, D.C. 20231

**TERMINAL DISCLAIMER TO OBTAIN
A DOUBLE PATENTING REJECTION**
[37 CFR 1.321(b)]

#24

I, Mark R. Daniel, residing at
64 Willis Drive, Ewing, NJ 08628, am a representative
of the assignee identified below, empowered to act on its behalf, pursuant to attached
Corporate Resolution No. 5, dated 4/27/99

The assignee, Merck & Co., Inc., certifies that it is the assignee of the entire right, title and interest in the above-identified patent application by virtue of an Assignment from the inventor(s) in the aforesaid patent application, which was recorded in the United States Patent & Trademark Office on Reel(s) 8778 Frame(s) 0631 on 10/27/97 or which was forwarded for recording on _____ or is being concurrently forwarded for recording under separate cover. Copies of the transmittal letter and assignment are attached. The aforesaid assignment establishes the ownership in the assignee of the above-identified application pursuant to 37 CFR 3.73(b).

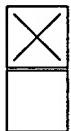
The undersigned has reviewed all of the evidentiary documents in the chain of title of the above-identified patent application, and the undersigned certifies that, to the best of the undersigned's knowledge and belief, title is in the assignee named above.

I hereby disclaim the terminal part of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term of:

- United States Patent No. 5866679 , or as presently shortened by any terminal disclaimer,

Any patent granted on application serial number _____

and hereby agree that any patent so granted on the above-identified application shall be enforceable on for and during such periods that the legal title to said patent shall be the same as the legal title to:



United States Patent No. 5866679,

Any patent granted on application serial number _____,

this agreement to run with any patent granted on the above-identified application and to be binding upon the grantor, its successors or assigns.

Petitioner does not disclaim any terminal part of any patent granted on the above-identified application prior to the expiration date of the full statutory term of:

-

United States Patent No. 5866679, or as presently shortened by any terminal disclaimer,
Any patent granted on application serial number _____,

in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

The Assistant Commissioner is requested to charge Account No. 13-2755 the sum of \$ \$110.00 and any fee deficiency required by this paper. A triplicate of this disclaimer is attached.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Disclaimant Mark R. Daniel

Counsel-Patents

Title

Merck & Co., Inc.

P.O. Box 2000

Rahway, New Jersey 07065

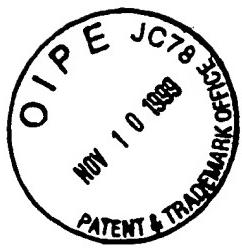
Telephone No. (732) 594- 6609

In Triplicate
Attachs.

MERCK & CO., INC.

Date

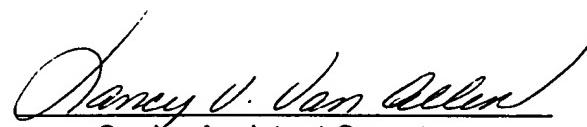
Date: 11/3/99



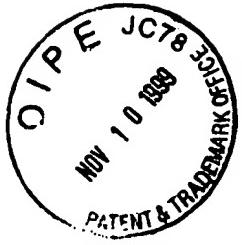
CERTIFICATION

I, NANCY V. VAN ALLEN, Senior Assistant Secretary of Merck & Co., Inc., a Corporation duly organized and existing under the laws of the State of New Jersey, do hereby certify that the attached, presently in full force and effect, is a true and correct copy of General Corporate Resolution #5, Patent Matters, as amended on April 27, 1999 by the Board of Directors of said Corporation at a meeting thereof duly called and held on April 27, 1999 at which a quorum was present.

IN WITNESS WHEREOF, I have hereunto subscribed my signature and affixed the seal of the Corporation this 28th day of July, 1999.


Senior Assistant Secretary

SEAL



General Corporate Resolution #5

PATENT MATTERS

RESOLVED, that any of the following:

Raymond V. Gilmartin-Chairman of the Board, President and Chief Executive Officer
Mary M. McDonald-Senior Vice President and General Counsel
Joseph F. DiPrima-Vice President and Assistant General Counsel
Paul D. Matukaitis-Vice President and Assistant General Counsel
Edward Murray-Counsel, Litigation
Charles M. Caruso-Counsel, International
W. Gwyn Cole-Counsel-European Patents
Mark R. Daniel-Counsel, Patents
David L. Rose-Counsel, Patents
Jack L. Tribble-Counsel, Patents
Melvin Winokur-Counsel, Patents
Donna L. Pollock-Administrator, Patents

are authorized to execute and to revoke on behalf of Merck & Co., Inc. and its affiliates (including subsidiaries) the following documents relating to patent matters:

Powers of attorney as fully in law as may be necessary and proper in connection with the acquisition, registration, maintenance and enforcement of patents and applications for patents, including powers of attorney relating to the prosecution or defense of patent rights before courts of law or other governmental tribunals, agencies or departments; affidavits and declarations; and any other documents which are necessary and proper for the acquisition, registration, maintenance, litigation and protection of patents.

Received 10/13/95
Merck / Name = 2778/00

PATENT
JOINT Merck Case 19253IC

U.S. Serial No. 08/540,412
Filing Date Oct. 6, 1995

ASSIGNMENT AND AGREEMENT

For value received, we, DEBORAH DEFEO-JONES, DONG-MEI FENG, VICTOR M. GARSKY, RAYMOND E. JONES AND ALLEN I. OLIFF

of 1126 CANTERBURY DRIVE, LANSDALE, PENNSYLVANIA 19446; 50 SARATOGA LANE, HARLEYSVILLE, PENNSYLVANIA 19438; 752 PALMER PLACE, BLUE BELL, PENNSYLVANIA 19422; 1126 CANTERBURY DRIVE, LANSDALE, PENNSYLVANIA 19446 AND 1412 FLORENCE DRIVE, GWYNEDD VALLEY, PENNSYLVANIA 19437, RESPECTIVELY,

hereby sell, assign and transfer to MERCK & CO., Inc., a corporation of the State of New Jersey, having an office at Lincoln Avenue, City of Rahway, State of New Jersey, and its successors, assigns and legal representatives, the entire right, title and interest, for all countries, in and to certain inventions relating to

NOVEL PEPTIDES

described in an application for Letters Patent of the United States, executed by each of us on even date herewith, or executed on the date shown in the Declaration and Power of Attorney relating to said application, and all the rights and privileges, including any and all benefits under the International Convention for the Protection of Industrial Property and related treaties, under any and all Letters Patents which may be granted in any foreign country, and under any and all extensions, divisionals, reissues and continuations of said Letters Patents.

We request that any and all Patents for said inventions be issued to said assignee, its successor, assigns and legal representatives, or to such nominees as it may designate.

We agree that, when requested, we will, without charge to said assignee but at its expense, sign all papers, take all rightful oaths, and do all acts which may be necessary, desirable or convenient for securing and maintaining Patents for said inventions in any and all countries and for vesting title thereto in said assignee, its successors, assigns and legal representatives or nominees.

We covenant with said assignee, its successors, assigns and legal representatives, that the rights and property herein conveyed are free and clear of any encumbrance, and that we have full right to convey the same as herein expressed.

We hereby authorize our attorney, DAVID A. MUTHARD, or an attorney with Power of Attorney in this application, of the said MERCK & CO., Inc., to insert Serial No., and Filing Date of said application(s) when known.

Signed at WEST POINT, PENNSYLVANIA

this 22 day of November 1995

Deborah DeFeo-Jones
Deborah DeFeo-Jones

Raymond E. Jones
Raymond E. Jones

Dong-Mei Feng
Dong-Mei Feng

Allen I. Oliff
Allen I. Oliff

Victor M. Garsky
Victor M. Garsky

PATENT
JOINT Merck Case 19253IC
U.S. Serial No. 08/540,412
Filing Date Oct. 6, 1995

ASSIGNMENT AND AGREEMENT

Signed at _____ this _____ day of _____

COMMONWEALTH OF PENNSYLVANIA }

County of MONTGOMERY } SS.

Personally appeared before me the above-named DEBORAH DEFEO-JONES DONG-MEI FENG,
VICTOR M. GARSKY, RAYMOND E. JONES ALLEN I. OLIFF

to me known and known to me to be the person(s) who executed the foregoing instrument and acknowledged said instrument to be their
free act and deed this 22nd day of November, 1995

Lorraine Cox O'Toole
Notary Public

NOTARIAL SEAL
LORRAINE COX O'TOOLE, Notary Public
Upper Gwynedd Twp., Montgomery Co.
My Commission Expires Oct. 5, 1996

County of _____ } SS.

Personally appeared before me the above-named

to me known and known to me to be the person(s) who executed the foregoing instrument and acknowledged said instrument to be their
free act and deed this _____ day of _____

Notary Public

SUBJECT: DECISION ON TERMINAL DISCLAIMER INFORMAL FORM

DATE: 1-27-00

APPL. S.N.: 081468,161

TO EXAMINER: C. Delacroix

ART UNIT: 1654

M. MINTGOMERY ROOM 1E18

MAILROOM DATE 11-10-99

AFTER FINAL YES NO NUMBER OF T.D(S). FILED 1

INSTRUCTIONS: I have reviewed the submitted T.D. with the results as set forth below. If you agree, please use the appropriate form paragraphs identified by this Informal memo in your next office action to notify applicant about the T.D. If you disagree with my analysis or have questions at all about the acceptability of the T.D., please see me or our Special Program Examiner. THIS MEMO IS AN INFORMAL, INTERNAL MEMO ONLY. IT MUST NOT BE MAILED TO APPLICANT, NOR SHOULD A COPY BE IN LEFT IN FILE.

The T.D. is PROPER and has been recorded. (See 14.23).

The T.D. is NOT PROPER and has not been accepted for the reason(s) checked below. (See 14.24).

The recording fee of \$ _____ has not been submitted nor is there any pre authorization in the application file to charge to a deposit account. (See 14.26.07)

Application Examiner has not processed T.D. fee. (See fee authorization).

The T.D. does not satisfy Rule 321(b)(3) in that the person who has signed the T.D. has not stated his/her interest (and/or the extent of the interest of the business entity represented by the signature) in the application/patent. (See 14.26 and 14.26.01).

The T.D. lacks the enforceable only during the common ownership clause needed to overcome a double patenting rejection, Rule 321(c). (See 14.27, 14.27.01).

It is directed to a particular claims(s), which is not acceptable since "the disclaimer must be of a terminal portion of the term of the entire patent to be granted". MPEP 1490. (See 14.26, 14.26.02).

The person who signed the terminal disclaimer:

has failed to state his/her capacity to sign for the business entity, (See 14.28).

is not recognized as an officer of the assignee, (See 14.29 and possibly 14.29.01).

No documentary evidence of a chain of title from the original inventor(s) to assignee has been submitted, nor is the reel and frame specified as to where such evidence is recorded in the office. 37 CFR 3.73(b). (See 1140 O.G. 72). NOTE: This documentary evidence or the specifying of the reel and frame may be found in the T.D. or in a separate paper submitted by applicant. (See 14.30).

No "statement" specifying that the evidentiary documents have been reviewed and that, to the best of the assignee's knowledge and belief the title is in the assignee seeking to take action. 37 CFR 3.73(b). (See 1140 O.G. 72) (See 14.31).

The T.D. is not signed. (See 14.26, 14.26.3), or 14.26.03 if TD is not signed by all the owners.

Attorney not of record in oath/decl. or a separate paper filed appointing a new or associate attorney. (See 14.29.01).

The serial number of the application (or the number of the patent) which forms the basis for the double patenting is missing or incorrect. (See 14.32).

The serial number of this application (or the number of the patent in reexam or reissue case(s) being disclaimed is missing or incorrect. (See 14.26, 14.26.04 or 14.26.05).

The period disclaimed is incorrect or not specified. (See 14.27, 14.27.2 or 14.27.3)(For Samples 14.27.04 and 14.27.05)

Other: _____

Suggestion to request refund of \$ _____. (See 14.35, 14.36).

EXAMINER NOTE: IF APPLICATION IS IN CONDITION FOR ALLOWANCE ANY OF THE ABOVE INFORMALITIES MAY BE FAXED IN TO THE GROUP

FOR SAMPLE TERMINAL DISCLAIMERS AND CERTIFICATES:

- Sample or a TD over a pending application and assignee Certificate (See 14.37).
- Sample of a TD over a prior patent and assignee Certificate (See 14.38).
- Sample Assignee Certificate under 37 CFR 3.73 (b) (See 14.39)